

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

June 5, 2003

A meeting of the Board of Environmental Protection was held on Thursday, June 5, 2003, at the Holiday Inn / Ground Round facility in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

**Board:** Katharine Littlefield, John Tewhey, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler, Irving Faunce, Melford Pelletier, John Marsh and Ernest Hilton

**Absent:** Virginia Plummer

<b><u>Staff:</u></b>	<u>Bureau of Land and Water Quality</u>	Judy Gates
	<u>Bureau of Land and Water Quality</u>	Marybeth Richardson
	<u>Bureau of Remediation and Waste Management</u>	Stacy Ladner
	<u>Bureau of Remediation and Waste Management</u>	Mike Parker
	<u>Bureau of Air Quality</u>	Jeff Crawford

**Others:** Brooke Barnes, Deputy Commissioner  
Jan McClintock, Assistant Attorney General  
Cynthia S. Bertocci, Executive Analyst  
Terry Hanson, Administrative Assistant

*(Meeting adjourned at approximately 3:30 p.m.)*

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:** Brooke Barnes, Deputy Commissioner reported the following:

Department:

*Aquaculture:* All comments have been received regarding the proposed draft General Permit on Finfish Aquaculture and Dennis Merrill is working on the Department's response to comments. Related to this issue, Judge Carter's decision along with a memo from the Attorney General's office will be provided to all Board members. June 19<sup>th</sup> is still the target date for the Board to consider the General Permit.

*Pesticide Application:* The Department is going to implement its first pesticide application to eliminate Hydrilla from a 40-acre pond (Pickerel Pond) in Limerick. The nature of the infestation along with attributes of the pond were major factors in the Department's decision to take this type of action. The DEP remains cautious in its approach to use herbicides and will consider all other options before resorting to chemical treatment to eliminate invasive aquatic plant life in a waterbody.

EPA:

*CO2 suit:* The Attorneys General of Maine, Connecticut, and Massachusetts have submitted a formal suit against the US Environmental Protection Agency to include CO2 as a criteria pollutant primarily because of its contribution to global warming. If the states prevail, there will be a lengthy process to adopt a national plan and standards.

Questions of the Commissioner

Board member Ziegler asked about the timing on receipt and guidance regarding Judge Carter's decision.

*The Attorney General's Office will provide copies of the decision along with a memo explaining that the Board may take judicial notice of the court action.*

Board member Faunce asked why the Board did not receive a copy of the draft General Permit as it was provided for review and comment by parties.

*The process will be modified to ensure that all draft orders on applications over which the Board has jurisdiction are made available to Board members at the time they are distributed for review and comment by the parties.*

Board member Marsh expressed his concerns regarding a recent meeting invitation he received to discuss the draft General Permit for Finfish Aquaculture with the parties, and concerns about the convening of the meeting as a final decision was pending before the Board.

*The Deputy Commissioner advised that the invitation was extended to Mr. Marsh in error, and Board member participation in such a meeting would constitute ex parte communication. Mr. Barnes explained that it is appropriate for Department staff to convene parties participating in an application proceeding before the Board in an effort to seek solutions for the Board's subsequent consideration.*

**B. CHAIRMAN’S COMMENTS:** Matt Scott’s nomination to the Board received a favorable vote out of committee. Matt is a well-qualified scientist who has worked for the DEP, IF&W and Project Share, which is involved in salmon restoration efforts downeast.

*Schedule:* The Chair confirmed that the Board will break for lunch today and will avoid working through the lunch break at future meetings.

**C. EXECUTIVE ANALYST COMMENTS:**

**D. BOARD CALENDAR:**

Reviewed

**E. DEPARTMENTAL ORDERS:** Reviewed

**F. EXECUTIVE SESSION:** None

## **II CONSENT AGENDA ITEMS**

1. The Board voted (9-0-0-1) to approve the BEP MINUTES OF APRIL 3, 2003.

The Board voted (9-0-0-1) to approve agenda items 2, 3, 4, 5 & 6.

2. RICHARD MINGO CONSTRUCTION, INC., Crawford – Administrative Consent Agreement (BLWQ-Land)
3. KATHLEEN THORNTON, Waterboro – Administrative Consent Agreement (BLWQ-Land)
4. DANIEL J. PAQUETTE and KATHLEEN D. PAQUETTE, Acton – Administrative Consent Agreement and Enforcement Order (BLWQ-Land)
5. RUSSELL CHASSE, Biddeford – Administrative Consent Agreement and Enforcement Order (BLWQ-Land)
6. TOWN OF MONMOUTH, Monmouth – Administrative Consent Agreement and Enforcement Order (BLWQ-Land)
7. The Board voted (6-2-1-1) to approve the revised draft Board order for PETERSON DESIGN GROUP granting the appeal.

Board members Ernest Hilton, Richard Wardwell, Katharine Littlefield, John Marsh, Irving Faunce and Melford Pelletier voted to support the motion. Board members John Tewhey and Jean T. Wilkinson voted opposed. Board member Nancy Ziegler recused. Board member Virginia Plummer was absent.

### III. Regular Agenda

1. DIAMOND COVE HOMEOWNERS ASSOCIATION (appeal of transfer license)

A motion to direct Department staff to draft a Board order vacating the June 11, 2001 transfer order. Failed (3-6-0-1). The vote was taken pursuant to 38 M.R.S.A. Section 341-D, 481-490 and 06-096 CMR Chapters 2 and 371-378.

Board members Ernest Hilton, John Tewhey and Katharine Littlefield voted to support the motion. Board members Melford Pelletier, Richard Wardwell, Irving Faunce, Nancy Ziegler, John Marsh and Jean T. Wilkinson voted opposed. Board member Virginia Plummer was absent

The Board voted (7-2-0-1) to deny the appeal and affirm the Commissioner's decision with the following amendments:

[1] *Amend Draft Board Order - Page 4 of 5 Paragraph 1*  
...delay its effective date until such time as the common properties, ~~with the exception of the wastewater treatment system~~, have been legally conveyed...

[2] *Amend modifications to Finding and Special Condition #3 as follows:*  
...common properties, ~~with the exception of the wastewater treatment system~~, have been legally conveyed to the Diamond Cove... **The common properties will be deemed legally conveyed when the deeds to the common properties have been duly recorded at the Cumberland County Registry of Deeds.**

[3] *Finding of Fact 3B of the Department's transfer license is modified as follows:*  
B. Financial Capacity: ~~There are no unfinished construction costs associated with the project to be transferred.~~

The vote was taken pursuant to 38 M.R.S.A. Section 341-D, 481-490 and 06-096 CMR Chapters 2 and 371-378.

Board members Irving Faunce, Jean T. Wilkinson, John Marsh, Ernest Hilton, Melford Pelletier, Nancy Ziegler and Richard Wardwell voted to support the motion. Board members John Tewhey and Katharine Littlefield voted opposed. Board member Virginia Plummer was absent.

Staff member: Marybeth Richardson, Bureau of Land and Water Quality

2. GTE OPERATIONS SUPPORT INC. AND CONTROL DEVICES INC. (Hazardous Waste Facility Post Closure License – approval)

The Board voted (8-0-0-2) on a motion to approve the Hazardous Waste Facility Post Closure License of GTE Operations Support Inc. and Control Device Inc., as modified to include the revised figure 6 attachment. The vote was taken pursuant to 38 M.R.S.A. Sections 341-D, 1301 et seq., and 06-096 CMR Chapters 850-857.

Board members John Tewhey, Ernest Hilton, Melford Pelletier, Irving Faunce, Katharine Littlefield, Richard Wardwell, Nancy Ziegler, and Jean T. Wilkinson voted to support the motion. Board members Virginia Plummer and John Marsh were absent.

Staff member: Stacy Ladner, Bureau of Remediation and Waste Management

3. CHAPTER 155, PORTABLE FUEL CONTAINER SPILLAGE CONTROL (adoption)

The Board voted (7-1-1-1) to adopt Chapter 155, Portable Fuel Container Spillage Control rules with an amendment to include the comments of the Portland Water District in the basis statement. The vote was taken pursuant to 38 M.R.S.A. Sections 341-D and 585-A.

Board members Irving Faunce, Nancy Ziegler, Ernest Hilton, Melford Pelletier, Richard Wardwell, John Tewhey and Jean T. Wilkinson voted to support the motion. Board member Katharine Littlefield voted opposed. Board member John Marsh recused. Board member Virginia Plummer was absent.

Staff member: Jeffrey Crawford, Bureau of Air Quality

4. CHAPTER 315, ASSESSING AND MITIGATING IMPACTS TO EXISTING SCENIC AND AESTHETIC USES (adoption)

The Board voted (4-3-0-3) to adopt Chapter 315, Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses as presented. The vote was taken pursuant to 38 M.R.S.A. Section 341-D, 480-A to 480-Z.

Board members Ernest Hilton, Melford Pelletier, John Tewhey and Nancy Ziegler voted to support the motion. Board members Katharine Littlefield, Richard Wardwell and John Marsh voted opposed. Board members Virginia Plummer, Irving Faunce and Jean T. Wilkinson were absent.

Staff member: Judy Gates, Bureau of Land and Water Quality

5. HEMOND'S MOTOCROSS PARK, L.L.C. (appeal and Administrative Consent Agreement and Enforcement Order (discussion/possible decision)).

The Board voted (6-2-0-2) to amend the draft Board order to add a new Conclusion # 4 to specify that, for purposes of the temporary parking area, a "day" consists of a 24-hour period beginning at the hour of first use.

Board members Ernest Hilton, Irving Faunce, Katharine Littlefield, Richard Wardwell, John Tewhey and John Marsh voted to support the motion. Board members Melford Pelletier and Nancy Ziegler voted opposed. Board members Virginia Plummer and Jean T. Wilkinson were absent.

The Board voted (8-0-0-2) to deny the appeal of Richard Thayer, Beverly Bressler, John Lutz, Kenneth Champagne and Christopher Nelson and affirm Department Order L-21215-NI-A-N as amended to include new Conclusion #4 which defines a "day" as a 24-hour period beginning at the hour of first use.

Board members Ernest Hilton, Melford Pelletier, Irving Faunce, Katharine Littlefield, Richard Wardwell, John Tewhey, Nancy Ziegler, and John Marsh voted to support the motion. Board members Virginia Plummer and Jean T. Wilkinson were absent.

The Board voted (5-3-0-2) to table consideration of the consent agreement associated with Hemond's Motocross Park LLC and directed Department staff to continue negotiations with the applicant regarding the Site Location Permit issue.

Board members Irving Faunce, Nancy Ziegler, Melford Pelletier, John Tewhey and Katharine Littlefield voted to support the motion. Board members Richard Wardwell, Ernest Hilton and John Marsh voted opposed. Board members Jean T. Wilkinson and Virginia Plummer were absent

The votes were taken pursuant to 38 M.R.S.A. Section 341-D and 420-D, and 06-096 CMR Chapter 2. Staff member: LaMarr Cannon, Bureau of Land and Water Quality